

Daniel J. Flanigan (NY #4266250)
James E. Bird (MO #28833)
Polsinelli Shalton Flanigan Suelthaus PC
7 Penn Plaza, Suite 600
New York, New York 10001
(212) 684-0199
Fax: (212) 684-0197
dflanigan@polsinelli.com
jbird@polsinelli.com

Christopher A. Ward (DE #3877)
Polsinelli Shalton Flanigan Suelthaus PC
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
(302) 252-0922
Fax No. (302) 252-0921
cward@polsinelli.com

Attorneys for BATS Holdings, Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

In re:

**LEHMAN BROTHERS HOLDINGS,
INC., et al.,**

Debtors.

Chapter 11

Case No.: 08-13555 (JMP)

(Jointly Administered)

-----X

**SUPPLEMENT TO LIMITED OBJECTION OF BATS HOLDINGS, INC. TO MOTION
TO SCHEDULE A SALE HEARING; (B) ESTABLISH SALE PROCEDURES;
(C) APPROVE A BREAK-UP FEE; AND (D) APPROVE THE SALE OF THE
PURCHASED ASSETS AND THE ASSUMPTION AND ASSIGNMENT
OF CONTRACTS RELATED TO THE PURCHASED ASSETS**

BATS Holdings, Inc. ("BATS"), by and through its undersigned counsel, hereby files this supplement (the "Supplement") to its Limited Objection (the "Objection") to the Motion to (A) Schedule a Sale Hearing; (B) Establish Sale Procedures; (C) Approve a Break-Up Fee; and (D) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts

Related to the Purchased Assets (the “Sale Motion”) [Docket No. 60] filed by Lehman Brothers Holdings, Inc. (“Lehman”) and LB 745 LLC, as debtors and debtors in possession (collectively, the “Debtors”). In further support of its Objection, BATS respectfully submits the following case law to the Court.

CASE LAW IN SUPPORT OF LIMITED OBJECTION

It is clear from the relevant case law that a right of first refusal is binding on a chapter 11 debtor and cannot be abrogated in a bankruptcy proceeding. See Northrup Grumman Technical Servs., Inc. v. The Shaw Group Inc. (In re IT Group, Inc.), 302 B.R. 483 (D. Del. 2003) (affirming the bankruptcy court’s decision prohibiting debtor from transferring membership rights in a limited liability company but permitting debtor to assign bare economic interest in a limited liability company to a third party subject to the other member’s rights of first refusal); In re Gibson, No. 93-25653-B, 1995 Bankr. LEXIS 1727, at *4 (Bankr. E.D. Va. Aug. 21, 1995) (finding bankruptcy estate bound by right of first refusal provision in a partnership agreement); In re Todd, 118 B.R. 432 (Bankr. D.S.C. 1989) (enforcing right of first refusal provision in partnership agreement); Rice v. Shoney's Inc. (In re Dean), 174 B.R. 787 (Bankr. E.D. Ark. 1994) (finding purchase option in a joint venture agreement enforceable under section 363 of the Bankruptcy Code); In re Frezzo, 217 B.R.985 (Bankr. E.D. Pa. 1998) (finding right of first refusal enforceable in authorizing sale of stock in closely-held corporation); In re Six, 190 B.R. 958 (Bankr. M.D. 1995) (finding right of first refusal provision in shareholder agreement governing medical professional association enforceable in 363 bankruptcy sale); In re Baquet, 61 B.R. 495 (Bankr. D. Mont. 1986) (finding option to purchase provision in shareholder agreement enforceable against bankruptcy estate).

Accordingly, to the extent that Lehman is attempting to sell its equity interests in BATS as part of the sale, BATS must be afforded the opportunity to exercise its right of first refusal to purchase these shares before they are offered to a third party.

Dated: September 19, 2008

Respectfully Submitted,

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC

By: /s/ Daniel J. Flanigan

Daniel J. Flanigan (NY #4266250)

James E. Bird (MO #28833)

7 Penn Plaza, Suite 600

New York, New York 10001

(212) 684-0199

Fax: (212) 684-0197

dflanigan@polsinelli.com

jbird@polsinelli.com

Christopher A. Ward (DE #3877)

Polsinelli Shalton Flanigan Suelthaus PC

222 Delaware Avenue, Suite 1101

Wilmington, Delaware 19801

(302) 252-0922

Fax No. (302) 252-0921

cward@polsinelli.com

Attorneys for BATS Holdings, Inc.